84-1721

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No.

IN THE

SUPREME COUFT OF THE UNITED STATES

OCTOBER TERM, 1984

ROBERT V. RAFTER,

Petitioner,

v.

ANGLO-IRANIAN OIL CO., LTD. and
THE ASSOCIATION OF THE BAR OF
THE CITY OF NEW YORK by its
President LOUIS A. CRACO,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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41pp

Questions Presented

Does the Declaration of Independence emanate from the cut off of foreign trade by the British Government, and, if it does, can it be brushed aside through denial of Fifth Amendment due process.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the final judgment of the United States Court of Appeals for the Second Circuit (A1) which affirms the dismissal

of the complaint by the district court (A2).

Opinions Below

There was no opinion rendered by the U.S. Court of Appeals (A1). The opinion of the U.S. District Court (M.E. LASKER, U.S.D.J.) dated May 24, 1984, is set forth at page A2 of the appendix and is officially reported at 101 FRD 763 (USDC, Sd NY).

Jurisdiction

The judgment of the U.S. Court of Appeals was entered January 14, 1985 (A1). The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

Statutes Involved

The constitutional and statutory provisions which are relevant to decision of this case, and the pertinent text of which is appended hereto, are the Declaration of Independence, the Fifth Amendment to the Constitution of the

United States, Rule 3(g) of the Civil Rules of the U.S. District Court (SD NY), Rule 60(b) of the Federal Rules of Civil Procedure, and the Sherman Antitrust Act (1890) 15 USC 1 at seq.

Statement

The complaint, filed September 30, 1983, alleges jurisdiction in the district court under Title 15 USC 1 et seq. (A5) and under the residual power of the court to entertain an independent action to reinstate a prior action based upon newly discovered evidence as outlined in Rule 60(b) of the Federal Rules of Civil Procedure (A4).

The complaint sets forth two causes of action. The first cause of action alleges newly discovered evidence concealed by the defendantsfrom the plaintiff and seeks reinstatement of plaintiff's prior antitrust action in the Southern

District of New York (A5). Jurisdiction of the present action in the district court is itself ancillary to the underlying Sherman Act 15 USC 1 et seq. jurisdiction of the original action.[1]

The second cause of action is for libel and respectfully requests the court to assume ancillary jurisdiction (A8).

The district court denied plaintiff's motion for summary judgment with respect to the second cause of action and granted defendants' motions to dismiss the complaint (A14).. The Court of Appeals affirmed (A1).

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1. Moore and Rogers, Federal Relief from Civil Judgments, 55 YLJ 655-657 (1946).

Reasons for Granting the Writ

Implicit in the complaint are the principles of the Declaration of Independence (A16). The complaint alleges that the British government cut off foreign trade[2] (A7).

Here we have the British Government under antitrust indictment in Washington, D.C. in October 1952. And the following February it is found filing a complaint with the bar association against one of its competitors for Iranian oil and agreeing with the bar association to keep the matter concealed from the competitor. And throughout Bethuel Webster is the agent of the British Government and simultaneously the president of the bar association.

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2. In Re Investigation of World Arrangements With Relation to the Production, Transportation, Refining & Distribution of Petroleum, 13 FRD 280 (1952, DC DC).

To dismiss the action is an affront to the Declaration of Independence and offends the principles for which it stands.

Argument

The dismissal is clearly a denial of fifth amendment due Process(All).

The complaint alone was before the court; there were no answers, depositions or affidavits. It is respectfully submitted that on a motion to dismiss, the allegations of the complaint must be taken as true, Bodie v. Connecticut, 28 L.Ed. 2d 113, 116 (1971). This was not a case of a motion to dismiss being converted into a motion for summary judgment.

The district court found no equity jurisdiction alleged (A3). But the complaint in both causes alleges concealment by the defendants (A6 and A9),

and the concealment is admitted by the bar association in its Rule 3(c) Statement (A12).

Both courts view the complaintas out of time and not in compliance with the one year rule for motions under Rule 60(b) of the Federal Rules of Civil Procedure (A3 and A12). But all of the authorities are to the contrary, Jones v. Anderson, 722 F 2d 211 (CA5, 1984) and Moore's Federal Practice, Vol. 7 2nd Ed., 60-350, 60-388 and 60-392:

> Time limitations upon an independent action for relief from a federal judgment on the basis of newly discovered evidence is merely laches.

So also the Advisory Committee Notes, 1946 Amendments FRCP state "The limitations of time are those of laches..." And when the federal doctrine of laches is applicable, the federal fraudulent concealment rule applies, Moore's Manual, 10.02(4), p. 607:

> When the federal doctrine of laches is applicable, it is clear that the federal fraudulent concealment rule (the time period does not begin to run

until the defrauded party has or should have had knowledge of the facts) applies.

And this equitable doctrine is read into every federal statute of limitations, Holmberg v. Armbrecht, 327 US 392, 397; 66 S Ct 585, 90 L Ed 743 (1946); Bailey v. Glover, 88 US (21 Wall) 342, 22 L Ed 636 (1874), at 347-350.

Conclusion

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT V. RAFTER,
Attorney for petitioner.

Order of United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of January one thousand nine hundred and eighty-five.

Filed January 14,1985
SEAL.

P r e s e n t : Honorable THOMAS J. MESKILL,

Honorable AMALYA L. KEARSE,

Honorable RICHARD J. CARDAMONE,

Circuit Judges.

ROBERT V. RAFTER,

Plaintiff - Appellant,

v.

ANGLO-IRANIAN OIL CO.,LTD and THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK by its President LOUIS A. CRACO,

Defendants - Appellees.

Docket No. 84-7576

This is an appeal from a judgment of the United States District Court for the Southern District of New York, Lasker, J., granting defendants' motion to dismiss plaintiff's complaint and denying plaintiff's motion for summary judgment.

This cause came on to be heard on the transcript of record from said district court and was taken on submission.

The judgment of the district court is AFFIRMED for the reasons set out in the

Ala

opinion of Judge Lasker below dated May 24, 1984.

We have reviewed all of appellant's claims and find them to be without merit. Because we believe that this appeal is completely frivolous, we award double costs to the appellees under Fed. R. App. P. 38.

s/ Thomas J. Meskill, U.S.C.J.

s/ Amalya L. Kearse, U.S.C.J.

s/ Richard J. Cardamone, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

Decision of Morris E. Lasker, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT V. RAFTER,

Plaintiff,

- against -

ANGLO-IRANIAN OIL CO., LTD and THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, by its President LOUIS A. CRACO,

Defendants.

- x

83 Civ. 7220 (MEL)

LASKER, D.J.

Plaintiff Robert Rafter, an attorney appearing pro se, filed this complaint on September 30, 1983, in which he seeks (1) to "reinstate: a prior action pursuant to Federal Rule of Civil Procedure 60(b) on the basis of newly-discovered evidence, and (2) to assert a claim for libel against the defendants. The action which Rafter seeks to reinstate was filed on November 27, 1953 in this court against Anglo-Iranian Oil Co., Ltd ("Anglo-Iranian"), the Corporation of Lloyds ("Lloyds of London), W.R. Grace & Co., and Alexander

Kellegrew, and asserted two causes of action under Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1 [1/] That Complaint was dismissed as to all defendants pursuant to a stipulation executed by Rafter and Lloyds of London on September 14, 1954.

The complaint alleges that the newly-discovered evidence constituting the basis for the Rule 60(b) relief consists of information contained in a file maintained by defendant Bar Association of the City of New York ("Bar Association"). The complaint states that the information would have supported Rafter's claims and was "intentionally concealed" by the Bar Association and Anglo-Iranian. The libel claim alleges that Rafter was defamed by the Bar Association's maintenance of a disciplinary file on Rafter, and that Anglo-Iranian, which at the time of the original suit was being represented by

the then-president of the Bar Association Bethuel Webster, participated in the libel.

Anglo-Iranian moves to dismiss the complaint on the grounds, inter alia, that Rafter's request for relief under Rule 60(b) is untimely, that the allegations of the complaint are inadequate to support an independent equitable action to set aside the prior judgment, that the Court lacks subject-matter jurisdiction over the libel claim, and that the libel claim is barred by the statute of limitations. The Bar Association moves to dismiss the complaint on most of the same grounds, and on the additional grounds that the Bar Association was not a party to the original action and therefore is not properly a party in a 60(b) proceeding, and the allegedly libelous statements are absolutely privileged because they were made in the performance of the Bar Association's quasi-judicial duties regarding the discipline of attorneys.

Rafter moves for summary judgment on his libel claim.

The motions to dismiss are granted. The claim for reinstatement of the 1953 action under Rule 60(b) is clearly untimely, since the grounds asserted for the claim - newly discovered evidence and fraud or misconduct of an adverse party - are grounds which must be asserted within one year of the entry of judgment. See Fed. R. Civ. Pr. 60(b)(2) and (3).

Moreover, even if the complaint is construed liberally as asserting an independent equitable action for relief from judgment,[2/] the allegations are plainly insufficient to support such a claim. The complaint alleges at most that the defendants concealed information which plaintiff was entitled to obtain through discovery, and that the evidence would have assisted in proving plaintiff's claims. This is not a case in which it is alleged that an adverse party obtained a judgment through

an elaborate fraud perpetrated at a trial or otherwise through the misuse of court processes, cf. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). Here, the complaint was dismissed 30 years ago pursuant to a voluntary stipulation entered approximately 10 months after the complaint was filed. Only the most extraordinary of circumstances could justify reopening a 30-year old judgment, and such circumstances are not presented by the wholly conclusory allegations that the purportedly concealed evidence would have "prove(d) the allegations of the 1953 complaint" and "controvert(ed) the statements of witnesses."[3/]

Because the first cause of action must be dismissed for the reasons just stated, the libel claim must also be dismissed for lack of subject matter jurisdiction. Accordingly, we need not address

the other grounds asserted in support of the motions to dismiss the libel claim.

The motions to dismiss are granted. Plaintiff's motion for summary judgment is denied.[4] The complaint is dismissed.

It is so ordered.

Dated: New York, New York
May 24, 1984

MORRIS E. LASKER
U.S.D.J.

FOOTNOTES

1. Rafter v. Anglo-Iranian Oil Co., No. 89-315.
2. Rule 60(b) specifically provides that it does not limit a court's power to entertain an independent action to set aside a judgment or verdict. A claim for Rule 60(b) relief should be made by motion in the original suit; since Rafter has instead filed a new complaint, his claim is more appropriately characterized as an independent action for relief from a judgment.
3. Complaint, par. 10. Indeed, it is difficult to understand the reference to witnesses, since the case concededly never went to trial.
4. In view of the dismissal of the complaint, the Bar Association's motion to vacate a notice of deposition filed by the plaintiff is moot.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - x

ROBERT V. RAFTER,

Plaintiff,

- against -

ANGLO-IRANIAN OIL CO., LTD. and THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK by its President LOUIS A. CRACO,

Defendants.

- - - - - - - - - - - - - - - - - - x

Civil No. 83 Civ. 7220 MEL

VERIFIED COMPLAINT

Plaintiff for his complaint herein alleges upon information and belief as follows:

FIRST CAUSE OF ACTION

FIRST: This is an action pursuant to Rule 60(b) to reinstate a prior action on the basis of newly discovered evidence.

SECOND: Plaintiff is a citizen of the United States residing in the Southern District of New York and is an attorney

at law duly admitted to practice before the Supreme Court of the State of New York and the United States District Court for the Southern District of New York.

THIRD: ANGLO-IRANIAN OIL CO., LTD., hereinafter designated as AIOC, is a corporation organized under the laws of the United Kingdom having its principal place of business within the United States at 600 Fifth Avenue in the City and State of New York.

FOURTH: The defendant bar association is an unincorporated association having its principal place of business at 42 West 44th Street in the City and State of New York.

FIFTH: Plaintiff filed a Sherman Act action 89 Civil 315 in this Court against AIOC pursuant to 15 USC, Sec.1 et seq. November 27, 1953 and discontinued said action by stipulation dated September 14,

1954, and now seeks to reinstate that action on the basis of newly discovered evidence contained in the file maintained by THE BAR ASSOCIATION OF THE CITY OF NEW YORK.

SIXTH: The file and the newly discovered evidence were intentionally concealed by the bar association in alliance with AIOC and others, and the concealment took the form of refusals to divulge the contents of the file and misrepresentation as to the existence and contents of the file, as more particularly appears from the file itself, and said concealment as to part of the file continues to the present.

SEVENTH: The file was ordered disclosed to the plaintiff in its entirety by the Appellate Division, First Department, by order entered October 5, 1982, copy appended and made a part hereof.

EIGHTH: Plaintiff made every effort to

obtain the file and its contents commencing with a subpoena duces tecum served on the bar association January 12, 1954, as the file itself discloses, and these efforts include personal inquiry, interrogation by deposition, court action, court motions, and law enforcement aid, continuing to date.

NINTH: The newly discovered evidence demonstrates that AIOC, the bar association and others engaged in: (1) the cut-off of foreign trade, (2) the restraint of foreign commerce, and (3) a combining with others to monopolize foreign oil, all in violation of the Sherman Act, 15 USC, Sec. 1, et seq.

TENTH: This evidence, made available in 1954, would (1) establish and prove the allegations of the 1953 complaint, (2) controvert the statements of witnesses in the 1953 action, and (3) provide a

different result within the meaning of Rule 60(b).

SEOND CAUSE OF ACTION

ELEVENTH: This is an action against the abovenamed defendants for libel, and plaintiff respectfully requests that the Court assume ancillary jurisdiction pursuant to Rule 8 because the libel arises from the same transaction, no new fact finding proceeding is required and no party is deprived of a substantial right.

TWELFTH: Plaintiff repeats and realleges the allegations contained in paragraphs SECOND, THIRD, and FOURTH.

THIRTEENTH: At the time of the commencement of this action the above named LOUIS A. CRACO was President of the defendant bar association.

FOURTEENTH: At the time of the alleged libel BETHUEL WEBSTER was President of the defendant bar association and also counsel

to ANGLO-IRANIAN OIL CO., LTD.

FIFTEENTH: On or about the 24th day of February, 1953, the defendant bar association and AIOC libeled the plaintiff by contructing and maintaining a file designated "VIOLATION - Canon 20 and 28" and proceeded to further publish said libel in bar association correspondence including a letter to the Clerk of the United States District Court for the Southern District of New York, copy of the designation and copy of the letter are annexed hereto and made a part hereof.

SIXTEENTH: The above referred to violation of canons is wholly false.

SEVENTEENTH: The defendant bar association failed in its duty to protect the plaintiff attorney and deliberately concealed the existence of the libel and the existence of the bar association file through false misrepresentation and has been assisted in these efforts by AIOC

and others.

EIGHTEENTH: By reason of said libel, plaintiff has been damaged in his personal reputation.

WHEREFORE, with respect to the FIRST CAUSE OF ACTION, plaintiff demands that the 1953 action be reinstated; and with respect to the SECOND CAUSE OF ACTION plaintiff demands damages in excess of the jurisdictional amount and punitive damages and costs.

Dated: New York, New York
September 29, 1983

ROBERT V. RAFTER,
Attorney for plaintiff

AMENDMENT V - CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Civil Rule 3 Southern District

.....

(g) Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the state-

ment required to be served by the opposing party.

Rule 60 Federal Rules of Civil Procedure

Rule 60. Relief from Judgment or Order

(a) Clerical mistakes

.....

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or

discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or for any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1). (2). and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the quality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. 1655, or to set aside a judgment for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished , and the procedure for obtaining any relief from a judgment shall by by motion as prescribed in these rules or by an independent action.
As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949.

Docket Entries

83 civ. 7220 - RAFTER v. ANGLO-IRANIAN OIL CO. et al

DATE	NO.	PROCEEDINGS LASKER, J.
9/30/83	1	Fld. Complt. Issued Summons & Notice Purs. to 28 USC 636(c).
10-12-83	2	Filed summons with Affdvt. of Service by John DeBello served summons & complaint on The Association of the Bar of the City of N.Y. 10-5-83 delivering true copy to Don Cunningham.
10-25-83	3	Filed pltff's MOTION for Summary Judgt. pur. to Rule 56 with respect to the second cause of action set forth in the complt. etc. Ret: 10-31-83
11-14-83	4	Filed defts' MOTION TO DISMISS FRCP 60(b)(2), (3) dismissing the second alleged cause of action on the grounds that the alleged libellous statments are as a matter of law absolutely privileged etc. FRCP 12(b)(1) lacks jurisdiction etc. Ret: 12-2-83
11-14-83	5	Filed CITY BAR ASSOCIATION'S MEMORANDUM in support of it's Motion to dismiss the complt.

11-16-83	6	Filed deft. The Assoc. of the Bar of the City of N.Y. MOTION TO VACATE NOTICE OF DEPOSITION, pur. FRCP 34 (b) and (3) etc. Ret: 12-2-83.
11-16-83	7	Filed City Bar Association's Memorandum In Support of its Motion to Vacate the Notice to take the deposition of the City Bar Association.
11-29-83	8	Filed City Bar Association's MEMORANDUM opposing pltff's Motion for summary judgt.
11-29-83	9	Filed defts' STATEMENT pur. to Rule 3(g).
11-29-83	10	Filed pltff's Notice of taking deposition of deft. bar Association by Pres. Bethuel Webster on 11-18-83 etc.
12-7-83	11	Filed MEMORANDUM in opposition to motion to dismiss & Motion to vacate Notice of Deposition for pltff.
12-13-83	12	Filed City Bar Association's REPLY MEMORANDUM in support ofits motion to dismiss the complt.
2-17-84	13	Filed Order...That the time of BP North America, Inc., to answer the complaint is extended till 3-9-84 ... so Ordered ... Lasker, J.

2-23-84	14	Filed pltff's MOTION for Default Judgment ...with Affdvt. of Service by Michael Talisman on 2-26-84 served summons & complt upon Anglo-Iranian Oil Co., Ltd. Sine die.
2-24-84	15	Filed deft. Anglo-Iranian Oil Co., Ltd's Opposition to Motion for Default Judgt.
3-5-84	16	Filed MEMO ENDORSED on document #14, Motion denied by order of 2-17-84 deft. was granted an ext. of time to answer or move until 3-5-84 ..The Motion is denied. So Ordered Lasker, J.m/n
3-12-84	17	Filed ANGLO-IRANIAN OIL's MEMORANDUM in support ofits motion to dismiss the complt.
3-12-84	18	Filed Anglo-Iranian Oil Co. Ltd's AFFDVT &MOTION pur. to FRCP 12(b)(6) dismissing the complt. & dismissing the first alleged cause of action on the ground that it is barred by the one year time limit in FRCP 60(b)(3), etc. Ret. 3-19-84.
3-19-84	19	Filed pltff's MEMORANDUM in opposition to Anglo-Iranian's Motion to Dismiss.
5-24-84	20	Filed Association of the Bar of the City of N.Y. MOTION TO VACATE Notice of Deposition dated 5-18-84.

5-24-84	21	Filed CITY BAR ASSOCIATION's MEMORANDUM in support of Motion to Vacate Deposition Notice.
5-29-84	22	Filed OPINION #56188, The motions to dismiss are granted. Pltff's Motion for Summary Judgt. is denied. The complt. is dismissed. So ordered Lasker, J. m/n JC
5-30-84	-	Filed MEMO ENDORSED on document #20, Motion moot as per order dated 5-24-84 dismissing this action. So ordered Lasker, J.
6-6-84	23	Filed JUDGMENT, Ordered that the complt. is dismissed. Cler. m/n
6-22-84	24	Filed pltff's Notice of taking deposition of deft. on 5-29-84.
6-28-84	25	Filed pltff's Notice of appeal to the usca 2nd circuit from the final judgment dtd 6-6-84.....
7-17-84	26	Filed true copy of USCA ORDER, Ordered that the appeal from the judgt. of 6-6-84 of USDC for the So. Dist. of N.Y. is dismissed. m/n

FACTS SUBMITTED BY THE DECLARATION OF INDEPENDENCE:

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harrass our People, and eat out their Substance.

He has kept among us, in Times of peace, Standing Armies, without consent of our Legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a Jurisdiction foreign to our Constitution, and unacknowledged by our Laws; giving his Assent to their Acts of

pretended Legislation:

For quartering large Bodies of Armed Troops among us:

For protecting them, by mock Trial, from Punishment for any murders which they should commit on the Inhabitants of these States:

For cutting off our trade with all parts of the World:

For imposing taxes upon us without our consent:

For depriving us, in many Cases, of the Benefits of Trial by Jury:

For Transporting us beyond Seas to be tried for pretended Offences:

.....